

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 21, 2001

GENERIC DOCKET TO ESTABLISH)	DOCKET NO. 01-00526
GENERALLY AVAILABLE TERMS AND)	
CONDITIONS FOR INTERCONNECTION)	

**ORDER GRANTING PETITIONS TO INTERVENE
AND DENYING MOTION TO SUSPEND PROCEEDINGS**

This matter came before the Pre-Hearing Officer upon the filing of a Petition for Leave to Intervene filed by Time Warner Telecom of the Mid-South, L.P. ("Time Warner Telecom") on June 27, 2001; Petitions to Intervene filed by the Southeastern Competitive Carriers Association ("SECCA"), US LEC of Tennessee, Inc. ("US LEC"), MCImetro Access Transmission Services, LLC ("MCImetro"), Brooks Fiber Communications of Tennessee, Inc. ("Brooks Fiber"), and XO Tennessee, Inc. ("XO") on August 7, 2001; and a Motion to Suspend Proceedings filed by SECCA, US LEC, MCImetro, Brooks Fiber, XO, and Time Warner on August 13, 2001.

I. PETITIONS TO INTERVENE

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.¹

Each of the Petitions to Intervene is timely filed; substantiates that the legal interests of the intervenor may be determined in this matter; and demonstrates that the interests of justice and the orderly and prompt conduct of this matter should not be impaired by allowing the intervention. Moreover, BellSouth Telecommunications, Inc. (“BellSouth”) did not file any objections to the Petitions. Therefore, pursuant to Tenn. Code Ann. § 4-5-310(a), the Petitions should be granted such that the Intervenors may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents filed in this docket.

II. MOTION TO SUSPEND PROCEEDINGS

A. Procedural History

On July 13, 2001, the Authority issued a Notice requiring BellSouth to modify the Interconnection Agreement located on its internet website to reflect all Authority decisions in other arbitration proceedings, generic dockets, and enforcement proceedings and file the “modified Interconnection Agreement” with the Authority on or before July 23, 2001. This same Notice also instructed interested persons and entities to file comments on the modified Interconnection Agreement and petitions to intervene on or before August 2, 2001. On July 18, 2001, BellSouth filed a letter to the attention of the Executive Secretary requesting an extension of time within which to file the modified Interconnection Agreement. On July 24, 2001, the Pre-Hearing Officer issued a notice granting BellSouth an extension until July 30, 2001 and all interested persons or entities an extension until August 9, 2001. BellSouth timely filed the modified Interconnection Agreement on July 30, 2001. On August 1, 2001, SEECA, XO, and US

¹ Tenn. Code Ann. § 4-5-310(a) (1998).

LEC filed a Motion for Extension. The Pre-Hearing Officer issued an Order on August 3, 2001 extending the August 9, 2001 due date to August 23, 2001.

Intervenors filed a Motion to Suspend Proceedings on August 13, 2001. Specifically, Intervenors request that the Pre-Hearing Officer suspend the proceedings pending resolution of the arbitrations between BellSouth and AT&T Communications of the South Central States, Inc., Docket No. 00-00079, and BellSouth and MCImetro/Brooks Fiber, Docket No. 00-00309. According to the Motion, BellSouth does not oppose the relief requested.

B. Findings and Conclusions

Intervenors argue that rather than use the modified Interconnection Agreement filed by BellSouth on July 30, 2001 as a starting point in this docket, the Authority should await the filing and approval of the interconnection agreements in the AT&T and MCImetro arbitrations and use either the AT&T agreement, the MCImetro agreement, or a combination of the two as the starting point in this docket. Intervenors provide the following arguments in support of their position. First, Intervenors note that further modifications to the modified Interconnection Agreement may be necessary after comparisons with Authority orders and previously approved agreements. Second, Intervenors state: “to assure a comprehensive document, different and/or multiple provisions of various agreements addressing the same issue must be considered and analyzed, as such agreements have been impacted by previous circumstances or a particular party’s business plan or position.”² Third, Intervenors note that no party except BellSouth has participated in all arbitration proceedings and, thereafter, seem to argue that use of the AT&T or MCImetro interconnection agreements will make it unnecessary for Intervenors to review all prior Authority decisions. Lastly, Intervenors insist that “much of the work the parties are now

² *Motion to Suspend Proceedings Pending Resolution of AT&T and WorldCom Arbitrations*, p. 2 (Aug. 13, 2001).

doing could be unnecessary or moot after conclusion of the AT&T and MCI arbitrations.”³ The Pre-Hearing Officer finds that these arguments cannot be upheld.

Intervenors base their arguments on the unsubstantiated presumption that the AT&T and MCI metro interconnection agreements will be “consistent with the Authority’s findings in other, prior arbitrations” or “reflect[] the Authority’s current view of those issues.”⁴ This presumption is not supported by references to any particular docket in which BellSouth and a competing carrier have filed an interconnection agreement after an arbitration that is compliant with the Authority’s rulings in that particular arbitration or previous arbitrations. Moreover, recent history rebuts this presumption.

In Docket No. 99-00430, the Authority approved an interconnection agreement filed after a contentious arbitration, but noted that the agreement did not reflect previous Authority rulings.⁵ During an Authority Conference on July 24, 2001, a majority of the Directors expressed their concerns that BellSouth and competing carriers generally submit negotiated interconnection agreements that do not contain provisions consistent with the arbitration proceeding between the two parties or previous arbitration orders. Thereafter, the majority voted to take no action on the interconnection agreement at issue.⁶ Again, at a regularly scheduled Authority Conference on August 7, 2001, a majority of the Directors focused on the fact that a particular interconnection agreement submitted for approval contained terms that were not consistent with previous Authority decisions and voted to take no action on the agreement.⁷

³ *Id.* at 2.

⁴ *Id.*

⁵ See *In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. With BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 99-00430, *Order Approving Interconnection Agreement*, p. 7 fn. 11 (Aug. 10, 2001).

⁶ See Transcript of Proceedings, July 24, 2001, pp. 26-37 (Authority Conference) (Chairman Kyle did not vote with the majority).

⁷ See *id.*, August 7, 2001, pp. 11-12 (Authority Conference) (Chairman Kyle did not vote with the majority).

As to the first argument specifically, the possibility that the modified Interconnection Agreement will need further modification is not persuasive because any starting point is likely to require further modification. It was the intention of the Authority that the modified Interconnection Agreement would serve as the starting point in this docket. As the starting point, it is likely that the modified Interconnection Agreement will require further modification before this docket reaches its conclusion. Likewise, it is likely that either the AT&T, MCImetro, or a combination agreement will require further modification because it is unlikely that either agreement will fully encompass the business interests of all Intervenors or comply with previous Authority orders. Thus, the need to modify the starting point is not a controlling fact in the disposition of the Motion to Suspend Proceedings.

As to Intervenors' second and third contentions, regardless of the starting point utilized, the parties should review previous Authority decisions as well as various agreements to advocate their client's positions. What is acceptable to AT&T or MCImetro may not necessarily conform to Intervenors' particular business plans.

Intervenors' fourth contention is also without merit. The July 13, 2001 Notice stated: "All comments shall discuss whether the terms and conditions contained in the 'modified Interconnection Agreement' are consistent with previous Authority decisions, whether necessary terms and conditions are absent, and whether unnecessary terms and conditions are present." The Authority would have to request these same comments if the Authority were to use the AT&T, MCImetro, or a combination agreement as a starting point because the comments are necessary to determine the parties' points of contention.

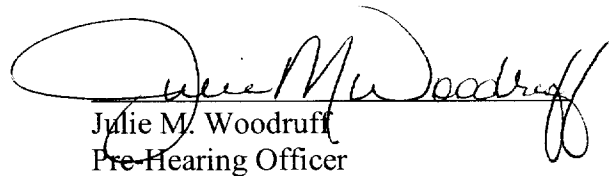
For the foregoing reasons, the Pre-Hearing Officer finds that Intervenors have failed to establish that there is a need to suspend this docket pending resolution of the AT&T and

MCImetro arbitrations. Therefore, it is the opinion of the Pre-Hearing Officer that the Motion to Suspend Proceedings should be denied.

IT IS THEREFORE ORDERED THAT:

1. Time Warner Telecom of the Mid-South, L.P.; Southeastern Competitive Carriers Association; US LEC of Tennessee, Inc.; MCImetro Access Transmission; Brooks Fiber Communications of Tennessee, Inc.; and XO Tennessee, Inc. are hereby given leave to intervene. Intervenors may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents herein.

2. The *Motion to Suspend Proceeding Pending Resolution of AT&T and WorldCom Arbitrations* filed by Southeastern Competitive Carriers Association, XO Tennessee, Inc., Brooks Fiber Communications of Tennessee, Inc., MCImetro Access Transmission Services, LLC, Time Warner Telecom of the Mid-South, L.P., and US LEC of Tennessee, Inc. on August 13, 2001 is denied.


Julie M. Woodruff
Pre-Hearing Officer

ATTEST:


K. David Waddell, Executive Secretary